

www.ssbb.com

SATTERLEE STEPHENS LLP

230 PARK AVENUE
NEW YORK, NY 10169-0079
(212) 818-9200
Fax (212) 818-9606

51 JOHN F. KENNEDY PARKWAY
FIRST FLOOR WEST
SHORT HILLS, NJ 07078-2713
(973) 218-2509
FAX (973) 218-2401

E-Mail: afish@ssbb.com
Direct Dial: (212) 404-8761

March 11, 2018

Via ECF

The Honorable P. Kevin Castel
United States District Court
Southern District of New York
500 Pearl Street
New York, NY, 10007-1312

Re: *United States v. Bergstein, 16 cr. 746 (PKC)*

Dear Judge Castel:

Defendant David Bergstein writes to request that he have until March 23, 2018 to respond to the Government's letter motion for a preliminary order of forfeiture (Doc. 307).

The defendant notes that the Government's proposed preliminary order of forfeiture appears flawed on its face. The proposed preliminary order states that Mr. Bergstein "personally obtained" over \$27 million dollars. But, even viewed in the light most favorable to the Government, the evidence does not support such a finding. Indeed, the Government stated in its summation that it did not "dispute that some of the money was used for medical billing." (Tr. 3066). In addition, the evidence showed that funds at issue were received by, among others, the P2 fund, other Weston-related entities, and entities entitled to funds as part of the unwind agreement. A court may not order forfeiture of funds that are transmitted directly to innocent third parties. *See United States v. Contorinis*, 692 F.3d 136, 147 (2d Cir. 2012).

Respectfully submitted,

SATTERLEE STEPHENS LLP

/s/ Andrew L. Fish
Andrew L. Fish

BIENERT, MILLER & KATZMAN, PLC

/s/ Thomas H. Bienert, Jr.
Thomas H. Bienert, Jr.

cc: All counsel (via ecf)